

STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

ENERGY

IN THE MATTER OF THE PETITION OF)
NUI ELIZABETHTOWN GAS COMPANY)
TO (1) REVISE ITS LEVELIZED GAS)
ADJUSTMENT CLAUSE; (2) REVIEW)
ITS EXISTING DEMAND SIDE MANAGEMENT)
ADJUSTMENT CLAUSE; AND (3) REVISE ITS)
RATES FOR COMMERCIAL AND INDUSTRIAL)
AIR CONDITIONING SERVICE AND)
SEASONAL DELIVERY SERVICE)

ORDER ADOPTING STIPULATION
AND APPROVING INITIAL DECISION

BPU DOCKET NOS. GR00070470
AND GR00070471

OAL DOCKET NO. PUCRA 07176-00N

IN THE MATTER OF THE PETITION OF NUI)
ELIZABETHTOWN GAS COMPANY TO)
REVISE ITS WEATHER NORMALIZATION)
CLAUSE RATE)

BPU DOCKET NO. GR00070483

IN THE MATTER OF THE PETITION OF NUI)
CORPORATION FOR AUTHORITY)
PURSUANT TO N.J.S.A. 48:3-7 AND N.J.A.C.)
14:1-5.6 TO SELL CERTAIN REAL)
PROPERTY IN WOODBRIDGE, NEW JERSEY)

BPU DOCKET NO. GM00030158

IN THE MATTER OF THE BOARD'S REVIEW)
OF ENERGY AND HOME HEATING OIL)
MARKETS)

BPU DOCKET NO. GO00020088

(SERVICE LIST ATTACHED)

BY THE BOARD:

On July 21, 2000, NUI/Elizabethtown Gas Company, now NUI Utilities, Inc. d/b/a Elizabethtown Gas Company ("Elizabethtown" or "Company") filed a petition ("July 21 Petition") with the Board of Public Utilities ("Board"), in Docket Nos. GR00070470 and GR00070471, to: 1) revise its Levelized Gas Adjustment Clause ("LGAC"); 2) review its Demand Side Adjustment Clause ("DSMAC") rate; and 3) revise its commodity rates for Commercial and Industrial Air Conditioning ("CIAC") and Seasonal Delivery Service ("SDS").

Levelized Gas Adjustment Clause

In its July 21 Petition, Elizabethtown sought to increase its LGAC rate for the LGAC year beginning October 1, 2000, from \$0.1236 per therm to \$0.2665 per therm, a change of \$0.1429

per therm or 17.63%. The requested rate increase was based on the Company's projection that it would have an under-recovered gas cost balance of \$6,908,620 as of September 30, 2000. As further set out in the July 21 Petition, Elizabethtown proposed to divide its LGAC rate into three components: a demand component, a commodity component and a prior period recovery component. The Company further proposed that it be permitted to adjust the commodity cost component of its LGAC rate each month to reflect changes in the unit price of natural gas. Under this proposal, the Company would be permitted to adjust its commodity cost component by up to 70% of the difference between the actual New York Mercantile Exchange ("NYMEX") closing price for gas for a particular month and the NYMEX price underlying the Company's annual LGAC filing.

The Company also proposed in its July 21 Petition to continue its current DSMAC rate of \$0.0000 per therm in effect for the period October 1, 2000 through September 30, 2001. The Company's base rates reflect \$1,450,000 of net Demand Side Management ("DSM") expenditures. The Company projected a DSM over-recovery balance of \$27,548 as of September 30, 2000, which the Company proposed to credit to the LGAC in October 2000. In accordance with the Company's Stipulation in Docket No. GO999030122, et al., as approved by Board Order dated March 30, 2001, the Company has removed all DSM related costs from base tariff rates and now recovers such costs through the DSM component of the Societal Benefits Charge. This rate is currently \$0.0028 per therm.

The Company also proposed to establish a commodity rate of \$0.4349 per therm for its CIAC rate. This rate reflected an increase of \$0.1253 per therm over the CIAC commodity rate previously in effect.

Finally, the Company also proposed to establish a commodity rate of \$0.0370 per dekatherm for its SDS rate. This rate represented a decrease of \$0.2013 per dekatherm from the previously effective SDS commodity rate.

Weather Normalization Clause

On July 24, 2000, Elizabethtown filed a petition with the Board, I/M/O the Petition of NUI Elizabethtown Gas Company to Revise its Weather Normalization Clause Rate ("WNC Petition"), Docket No. GR00070483. In its WNC petition, the Company proposed to increase its currently approved Weather Normalization Clause ("WNC") rate from \$0.0174 per therm to \$0.0213 per therm to be charged to the customer classes subject to the WNC during the period October 1, 2000 through April 30, 2001. In calculating the proposed WNC rate, the Company utilized a revised number of Normal Calendar Month Degree Days calculated in accordance with the Board Order dated December 16, 1998 in Docket No. GR97080598. The proposed WNC rate was based on the fact that the 1999-2000 winter heating season was 622 degree days or 12.49% warmer than normal, resulting in a margin revenue deficiency of \$4,390,427. The proposed WNC rate was designed to enable the Company to collect \$6,289,688 of the Company's total WNC-related revenue deficiency of \$9,409,836 during the 2000-2001 Winter Period. The Company further proposed to put in effect its proposed WNC rate of \$0.0213 per therm, subject to refund, on October 1, 2001, in order to afford the Company the opportunity to collect the remainder of the WNC-related revenue deficiency.

Woodbridge Property Sale

By Order dated October 26, 2000, in I/M/O the Petition of NUI Corporation for Authority Pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6 to Sell Certain Real Property in Woodbridge, New Jersey, Docket No. GM00030158, the Board approved the petition of Elizabethtown to sell certain property located in Woodbridge, New Jersey ("Woodbridge Property") to Continental Developers, Inc. The sale price of the Woodbridge Property was \$6,615,000 resulting in a pre-tax gain to Petitioner of approximately \$5.6 million. In its Order approving the sale, the Board directed that the ratemaking treatment of the gain be addressed and decided in connection with the Company's LGAC proceeding in Docket No. GR00070470.

Energy and Home Heating Markets

By Order dated October 2, 2000, in I/M/O the Board's Review of Energy and Home Heating Oil Markets, Docket No. GO00020088, the Board ordered the State's gas utilities to implement a number of measures designed to ensure that interruptible gas customers have sufficient alternative fuel in the event of interruption of gas service. The Board also directed its Staff to review the natural gas interruption practices of the State's gas utilities in their individual LGAC proceedings.

Background/Procedural History

Parties to these proceedings included the Company, the Division of Ratepayer Advocate, ("Advocate"), the Township of Woodbridge ("Woodbridge") and Board Staff ("Staff").

On August 1, 2000, the LGAC, DSM and WNC matters were transmitted to the Office of Administrative Law ("OAL") and assigned to Administrative Law Judge William J. Gural ("ALJ"). As described herein, proceedings at the OAL focused on four issues: 1) the Company's LGAC, DSMAC, CIAC and SDS rate filings, 2) the Company's Weather Normalization Clause filing, 3) the sale of the Company's Woodbridge property, and 4) Energy and Home Heating Oil Markets.

On August 25, 2000, Woodbridge filed a Notice of Motion to Intervene in the LGAC proceeding, pursuant to N.J.A.C. 1:1-16.2(b), in opposition to level of the Company's proposed rate increase. On October 17, 2000, the ALJ approved Woodbridge's Motion to Intervene.

Public hearings were conducted on September 18, 2000 in Flemington, New Jersey and on September 20, 2000 in Rahway, New Jersey.

On October 4, 2000, Elizabethtown filed a motion for provisional rate relief with the Board, pursuant to N.J.S.A. 48:2-21.1 and N.J.A.C. 1:1-12.6, seeking to increase its LGAC rate by up to \$0.2474 per therm, or such other amount as determined by the Board, on a provisional basis, subject to refund, pending the outcome of its LGAC proceeding. The filing reflected the latest LGAC status because of the projection of higher gas costs on the New York Mercantile Exchange ("NYMEX") and projects an under-recovery in the amount of \$74,576,981 as of September 30, 2001. If approved, Elizabethtown's requested rate increase would have increased the monthly bill of a typical residential customer using 100 therms from \$82.80 to \$107.54, an increase of \$24.74 or 29.9%.

On October 4, 2000, the Secretary of the Board sent a letter to the parties in the LGAC proceeding, as well as to the parties of the other ongoing LGAC proceedings of the three other gas utilities, advising them that the Board had received emergent Motions for Provisional Rate Relief from all four New Jersey natural gas providers. On October 4, 2000, the Board Secretary sent a letter to the Advocate, with copies to the other parties to the proceeding, advising the Advocate that the emergent motion had been filed and requesting a response to the emergent motion by October 6, 2000. On October 5, 2000, the Advocate filed its answer to the emergent motion. This was the only response to the emergent motions received by the Board. The Advocate's letter was supplemented on October 6, 2000, by a certification from Mr. Richard LeLash, the Advocate's consultant.

On November 1, 2000, the Board issued an order ("November 1 Order") authorizing a provisional basis, an increase in Elizabethtown's LGAC rate, including sales tax, from \$0.1236 per therm to \$0.2665 per therm, effective November 1, 2000, subject to refund and interest. The November 1 Order further approved the creation of a flexible gas commodity pricing mechanism ("FPM") to be implemented in accordance with specified parameters during the period December 1, 2000 through April 30, 2001, subject to further Board decision. The FPM permits the Company to make monthly adjustments, including increases of up to \$0.0194 per therm, to the LGAC rate from December 2000 through April 2001, subject to a further Board decision after review of Petitioner's December 2000 submission and subsequent January 2001 hearings.

In its November 1 Order, the Board specifically recalled the following LGAC issues that had been previously transmitted to the OAL: (1) the level of rates necessary for Elizabethtown to recover its prudently incurred gas costs; and (2) the reasonableness of Elizabethtown's monthly LGAC adjustment proposal. The Board directed that all other issues in the LGAC would continue at the OAL.

On July 31, 2001, Elizabethtown filed with the Board a copy of a letter dated July 26, 2001 to the Counsel for Woodbridge, which attached a proposed stipulation for review, seeking an answer relative to whether the Township of Woodbridge objects or does not object to the stipulation. By letter dated August 3, 2001, Woodbridge stated that it declined to assert a position regarding the Stipulation.

Stipulation

On August 8, 2001, ALJ Gural convened an evidentiary hearing. At this hearing, the Company, the Advocate, and Staff (collectively, "Parties") entered into the attached Stipulation. In the Stipulation, the Parties agreed that:

- 1) The current DSMAC rate of \$0.0028 per therm shall remain in effect until changed by further order of the Board;
- 2) There shall be no change in the current WNC rate of positive \$0.0174 per therm. The same WNC rate of positive \$0.0174 per therm shall take effect October 1, 2001 and shall remain in effect on a subject to refund basis until changed by further order of the Board, provided, however, that the Company shall make a filing by July 2001 to

reconcile its WNC rate and recoveries.¹ If this filing shows that the WNC rate of \$0.0174 per therm should be reduced, then the reduced rate will take effect October 1, 2001. The Parties stipulate that the Company's WNC-related margin deficiency for the period October 1, 1999 through April 30, 2000 totals \$4,390,427. Attached to the Stipulation, as part of Appendix A, is Fifth Revised Sheet No. 105 to Section II of the Company's tariff, which sets forth the revised Normal Calendar Degrees Days used in determining the WNC;

- 3) The Company shall revise its SDS commodity rate from \$0.2383 per dekatherm to \$0.0370 per dekatherm as of the effective date of a Board Order approving the Stipulation. This rate shall remain in effect until changed by further order of the Board. Attached to the Stipulation, as part of Appendix A, is Ninth Revised Sheet No. 96 to Section II of the Company's tariff, which sets forth the revised SDS commodity rate;
- 4) The Company shall revise its current CIAC commodity rate from \$0.3096 per therm to \$0.5436 per therm as of the effective date of this Order. This rate shall remain in effect until changed by further order of the Board. Attached to the Stipulation, as part of Appendix A, is Fourth Revised Sheet No. 26 to Section II of the Company's tariff, which sets forth the revised CIAC commodity rate;
- 5) The Company has an over-recovery balance in the DSMAC of \$185,331 as of September 30, 2000. The Company shall continue to defer this balance and utilize it to calculate the DSM component of the SBC to be established by the Company in its filing to the Board that is currently anticipated to be made in July 2001 to be effective October 2001;²
- 6) The following principles shall be applied in evaluating the Company's future gas purchasing activities: (a) In determining whether to purchase seasonal natural gas supplies through the East Coast Natural Gas Cooperative, the Company will incorporate the Inside FERC First-Of-The-Month index as one of the pricing options on which suppliers may submit bids, (b) In evaluating bids received for such supplies, the Company will prepare a city gate pricing analysis for all bids received that will identify the accepted bid and compare that bid to the equivalent NYMEX price delivered to the Company's city gate. The Company will utilize competitive bidding in order to select a supplier under any future mid-term, firm physical supply contracts;
- 7) Customers shall be credited with \$2,838,159, which represents 50% of the net gain attributable to the sale of the Woodbridge Property. These credits shall be applied as follows: (a) \$1.3 million plus carrying costs, calculated at the same rate applied to Societal Benefits Charge balances as modified from time to time, shall be accrued from and after April 1, 2001 on the customers' share of the Woodbridge Property sale proceeds, which are to be used to provide a billing services credit in the Company's Customer Account Services proceeding, BPU Docket No. EX99090676; and (b) the remaining \$1,538,159 will be used to offset the Company's current WNC-related margin deficiency. In the event that the stipulation in Docket No. EX99090676 does not become effective, the parties agree the Woodbridge Property sale proceeds that are set

¹ The Company made its WNC filing on August 17, 2001, in Docket No. GR01080497.

² The Company made its DSMAC filing on August 17, 2001, in Docket No. GR01080501.

aside for use in that proceeding will be used in a manner to be subsequently agreed to by the parties and/or approved by Board. The Company will be permitted to retain the remaining 50% of the net gain from the sale of the Woodbridge Property; and

- 8) The only remaining issues to be resolved in this proceeding are those that may arise from an examination of the Company's practices for interrupting non-firm customers. All remaining issues including issues related to (i) recoverable LGAC costs for the LGAC Year ending September 30, 2000, (ii) recoverable DSM costs for the DSM year ending September 30, 2000, and (iii) recoverable WNC margin revenues for the period ending April 30, 2000 are resolved.

Initial Decision

After hearing, and considering the stipulation of the parties, the ALJ filed his Initial Decision with the Board on August 16, 2001. The ALJ found that:

- 1) The parties have voluntarily agreed to the settlement;
- 2) The settlement fully disposes of all issues in controversy and is consistent with the law. It provides for no change in the demand side management clause rate and the Weather Normalization rate. The Commercial and Industrial Air Conditioning rate is increased from \$0.3096 per therm to \$0.5436 per therm. Its Season Delivery Service rate is reduced from \$0.2383 to \$0.0370 per dekatherm. Paragraph 1 of the Stipulation contains the ratemaking treatment of the Woodbridge property sale where customers shall be credited with \$2,838,159 or 50% of the net gain on the sale. The issue over the Company's practices for interrupting non-firm customers is contained in a transcript of a deposition of a Company's witness a copy of which is submitted with the Initial Decision for review by the BPU staff. The issue over Energy and Home Heating oil markets is also discussed in the same deposition which accompanies this Initial Decision; and
- 3) Intervener Township of Woodbridge declined to take a position on the stipulation.

Discussion and Findings

The Board has reviewed the stipulation and the Initial Decision. The Board FINDS the rate relief sought is reasonable. The Board HEREBY ORDERS the continuation of the current DSMAC rate of positive \$0.0028 per therm, effective as of the date of this Order, and the continuation of the WNC rate of positive \$0.0174 per therm, effective October 1, 2001. The Board HEREBY ORDERS the implementation of the CIAC rate of \$0.5436 per therm and the implementation of the SDS rate of \$0.0370 per dekatherm, both effective as of the date of this Order. The Board further ORDERS the Company to credit firm customers the amount of \$2,838,159, which represents 50% of the net proceeds of the sale of the Woodbridge Property. In addition, the Board ACCEPTS the transcript of the deposition of the company's witness relative to its practices for interrupting non-firm customers that is included with the ALJ's Initial Decision for Staff's review.

The Company's LGAC costs, WNC rate, DSMAC rate, CIAC rate, SDS rate and any of its under-recovery balances remain subject to audit by the Board. This Order shall not preclude nor prohibit the Board from taking any such actions deemed to be appropriate as a result of any such audit.

DATED: September 27, 2001

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)
CONNIE O. HUGHES
ACTING PRESIDENT

(SIGNED)
FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)
CAROL J. MURPHY
COMMISSIONER

ATTEST:

(SIGNED)
FRANCES L. SMITH
SECRETARY